

ORIGINAL



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MEMORANDUM

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TO: Docket Control  
Arizona Corporation Commission

FROM: Ernest G. Johnson  
Director  
Utilities Division

Date: October 12, 2006

RE: STAFF REPORT FOR THE LINKS AT COYOTE WASH UTILITIES, L.L.C. –  
APPLICATION FOR EXTENSION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER SERVICE  
(DOCKET NO. SW-04210A-06-0220)

Attached is the Staff Report for The Links at Coyote Wash Utilities, L.L.C. application for extension of its existing Certificate of Convenience and Necessity for wastewater service. Staff is recommending approval with conditions.

EGJ:BNC:tdp

Originator: Blessing Chukwu

Arizona Corporation Commission  
**DOCKETED**

**OCT 12 2006**

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Service List for: The Links at Coyote Wash Utilities, L.L.C.  
Docket No. SW-04210A-06-0220

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

THE LINKS AT COYOTE WASH UTILITIES, L.L.C.

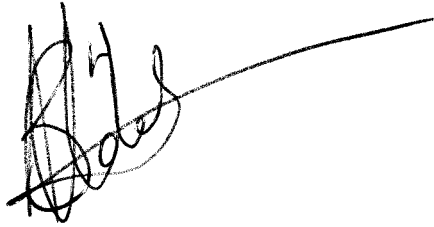
DOCKET NO. SW-04210A-06-0220

APPLICATION FOR EXTENSION  
OF EXISTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO PROVIDE  
WASTEWATER SERVICE

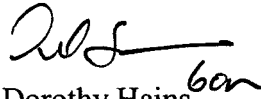
OCTOBER 12, 2006

## STAFF ACKNOWLEDGMENT

The Staff Report for The Links at Coyote Wash Utilities, L.L.C. (Docket No. SW-04210A-06-0220) was the responsibility of the Staff members signed below. Blessing Chukwu was responsible for the review and analysis of the Company's application. Dorothy Hains was responsible for the engineering and technical analysis.

A handwritten signature in black ink, appearing to be 'Blessing Chukwu', with a long horizontal line extending to the right.

Blessing Chukwu  
Executive Consultant

A handwritten signature in black ink, appearing to be 'Dorothy Hains', with a horizontal line and a small '60' or similar mark to the right.

Dorothy Hains  
Utilities Engineer

**EXECUTIVE SUMMARY**  
**THE LINKS AT COYOTE WASH UTILITIES, L.L.C.**  
**APPLICATION FOR EXTENSION OF**  
**CERTIFICATE OF CONVENIENCE AND NECESSITY**  
**DOCKET NO. SW-04210A-06-0220**

On April 4, 2006, The Links at Coyote Wash Utilities, L.L.C. ("The Links" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") for an extension of its Certificate of Convenience and Necessity ("CC&N") to provide wastewater service to an area encompassing a development known as Links at Coyote Wash, in Yuma County, Arizona. On August 31, 2006, Staff filed a Sufficiency Letter indicating that the application had met the sufficiency requirements of Arizona Administrative Code.

The Links is an Arizona Limited Liability Company, in good standing, and engaged in providing wastewater utility service in the Town of Wellton, south of the Wellton Mohawk Canal, in Yuma County, Arizona. The original CC&N for the Company was granted by the Commission in Decision No. 67157 (August 10, 2004). The Company currently serves approximately 159 wastewater utility customers, which are mostly residential customers. According to the Company's Annual Report for the year ending December 31, 2005, the Company has wastewater utility plant in service of approximately \$549,890.

By this application, the Company is seeking Commission authority to extend its wastewater service territory to include approximately one half square mile.

The Company plans to expand the plant to 0.235 Million gallons per day within the next five years. Staff believes that the estimated construction costs for the facilities needed to serve the extension area are reasonable and appropriate for this project. However, no "used and useful" determination of the proposed wastewater plant facilities was made and no particular treatment should be inferred for rate making or rate base purposes.

The Links is in compliance with the Arizona Department of Environmental Quality ("ADEQ"), and the Commission.

Staff recommends the Commission approve The Links' application for extension of its existing Certificate of Convenience and Necessity to provide wastewater service in Yuma County, as amended, subject to compliance with the following conditions:

1. To require The Links to charge its tariffed rates and charges in the extension area.
2. To require The Links to file with Docket Control, as a compliance item in this docket, within two years of the effective date of an order, copies of the Approval of Construction documentation for the collection line installation needed to serve the extension area.
3. To require The Links to file a copy of its approved 208 Plan Amendment with Docket Control, as a compliance item in this matter, by December 31, 2007.

4. To require The Links to file a copy of ADEQ's APP modification with Docket Control, as a compliance item in this matter, by December 31, 2008.
5. To require that all operators, agents, or employees including employees and agents of contractors and/or subcontractors operating or constructing the Links' facilities must comply with all Arizona Division of Occupational Safety and Health ("ADOSH") requirements including any and all training required by ADOSH to operate wastewater facilities.
6. To require that on an annual basis, on the anniversary date of the Decision in this matter, for three years, The Links should file in Docket Control, as a compliance item in this docket, certification from ADOSH that it has availed itself of ADOSH consultation services and its operators, agents, employees and agents of contractors/and or subcontractors operating or constructing the Links' facilities have taken appropriate training.

Staff further recommends that the Commission's Decision granting the requested CC&N extension be considered null and void, after due process, should the Company fail to meet the Condition No. 2, 3, and 4 listed above within the time specified.

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## **Introduction**

On April 4, 2006, The Links at Coyote Wash Utilities, L.L.C. ("The Links" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") for an extension of its Certificate of Convenience and Necessity ("CC&N") to provide wastewater service to an area encompassing a development known as Links at Coyote Wash, in Yuma County, Arizona.

On May 3, 2006, the ACC Utilities Division ("Staff") filed an Insufficiency Letter, indicating that the Company's application did not meet the sufficiency requirements of Arizona Administrative Code ("A.A.C.") R14-2-602(B). A copy of the Insufficiency Letter was sent to the Company via U.S. mail. In the Letter, Staff listed the deficiencies that need to be cured for administrative purposes.

On June 16, 2006, June 20, 2006, August 3, 2006, and August 21, 2006, The Links provided additional documentation to support its relief requested and revised the legal description.

On August 31, 2006, Staff filed a Sufficiency Letter indicating that the application had met the sufficiency requirements of A.A.C.

## **Background**

The Links is an Arizona Limited Liability Company, in good standing, and engaged in providing wastewater utility service in the Town of Wellton, south of the Wellton Mohawk Canal, in Yuma County, Arizona. The only member of The Links is G-12, L.L.C., whose membership is comprised of Glen T. Curtis and the Curtis family. G-12, L.L.C. is the owner and developer of the Links at Coyote Wash development. The Pre-annexation Development Agreement required G-12, L.L.C. to provide wastewater treatment facilities. The Links was formed by G-12, L.L.C., as a stand alone utility operation, separate from the development business.

The original CC&N for the Company was granted by the Commission in Decision No. 67157 (August 10, 2004). The Company currently serves approximately 159 wastewater utility customers, which are mostly residential customers.

According to the Company's Annual Report for the year ending December 31, 2005, the Company has wastewater utility plant in service of approximately \$549,890. The Company reported an annual revenue of approximately \$43,773 and a net loss of approximately \$64,130 for wastewater for year 2005. No long term debt was reported for wastewater.

The Company has only been in operation for approximately 2 years and is required to file a rate case by Decision No. 67157 no later than three months following the fifth year anniversary of the effective date of the decision.



### **The Extension Request**

The Links is currently certificated by the Commission to provide wastewater within portions of Yuma County, Arizona. By this application, the Company is seeking Commission authority to extend its wastewater service territory to include a development known as The Links at Coyote Wash located in the Town of Wellton, Yuma County, Arizona. The requested area is adjacent to the Company's existing certificated area and will add one half square mile to the existing certificated area. Water service will be provided to the extension area by the Town of Wellton's municipal water system.

### **The Wastewater System**

The Links owns and operates a 0.0693 million gallon per day ("MGD") wastewater treatment plant ("WWTP"). The WWTP is a package treatment plant, manufactured by Santec Corporation, equipped with equalization chamber, aeration/anoxic basins, secondary clarifier, and chlorination/dechlorination devices. The treated effluent is used for golf course irrigation. Wastewater flow was 0.014 MGD during the peak day in 2005. The daily average flow in the peak day is 88 gallons per day per connection ("GPD/connection"). Based on the Company's annual reports, Staff estimates that the growth rate in the Company's CC&N area is 59 additional customers per year. In this application, the Company projects that 250 additional customers in the requested area will need service within the next five years. Staff believes that plant expansion will be needed in a few years.

The Company proposes to install 9,420 feet of 8-inch sewer collection line, 32 manholes and expand its existing treatment plant capacity to 0.235 MGD, in conjunction with this CC&N extension request, within the next five years.

The Company estimates that construction costs for serving the requested extension area are approximately \$211,950 for the collection line (approximately \$22.5/ft), \$112,000 for manholes (approximately \$3,500/manhole), and \$804,480 for the treatment plant expansion (approximately \$4.86/GPD). Staff concludes that the estimated costs are reasonable and appropriate for this project. However, no "used and useful" determination of the proposed wastewater plant facilities was made and no particular treatment should be inferred for rate making or rate base purposes.

Staff recommends that the Company file with Docket Control, as a compliance item in this docket, within two years of the effective date of an order, copies of the Approval of Construction documentation for the collection line installation needed to serve the extension area.

### **Safety**

The Company is managed by Pivotal Utility Management ("Pivotal"). Pivotal owns three and operates five utilities in Arizona. Two of the principals of Pivotal are owners of Santec

Corporation ("Santec"), a Colorado corporation that constructs, operates and manages wastewater facilities. The Links' WWTP was manufactured by Santec.

On October 24, 2001, Santec was implicated in a tragic incident that took place at the Far West Water and Sewer Company ("Far West") facility in the Mesa Del Sol Subdivision in Yuma, Arizona. An employee of Santec and an employee of Far West died during the course of working on one of Far West's tanks that had been constructed by Santec. Santec pled guilty to a Class 6 felony for Violating Safety Standards and Causing the Death of an Employee. (See Attachment C – Plea Agreement). Prior to the tragic incident, Santec did not have adequate policies and training concerning permit-required confined spaces. Following the Far West incident, Santec has provided training to all of its employees on permit-required confined spaces entries. (See Decision 68608, issued March 23, 2006).

Staff believes that due to the tragic consequences of Santec's safety violations at Far West, the Commission should take measures to ensure that such events do not occur at The Links. As such, Staff recommends that all operators, agents, or employees including employees and agents of contractors and/or subcontractors operating or constructing the Links' facilities must comply with all Arizona Division of Occupational Safety and Health ("ADOSH") requirements including any and all training required by ADOSH to operate wastewater facilities. Staff further recommends that on an annual basis, on the anniversary date of the Decision in this matter, for three years, The Links should file in Docket Control, as a compliance item in this docket, certification from ADOSH that it has availed itself of ADOSH consultation services and its operators, agents, employees and agents of contractors/and or subcontractors operating or constructing the Links' facilities have taken appropriate training.

#### **Arizona Department of Environmental Quality ("ADEQ") Compliance**

ADEQ regulates the Company's wastewater facility under Inventory # P-105311. Based on a May 2, 2006 ADEQ compliance status report, ADEQ has indicated the Company's wastewater system is in compliance with ADEQ regulations.

The Company was issued an Aquifer Protection Permit ("APP") in 2004, for a 0.126 MGD WWTP. As such, the proposed expansion of the Company's existing treatment plant capacity to 0.235 MGD will require the Company to file an APP modification and a Section 208 plan amendment. Staff recommends the Company file a copy of its approved 208 Plan Amendment with Docket Control, as a compliance item in this matter, by December 31, 2007. Staff further recommends that the Company file a copy of ADEQ's APP modification with Docket Control, as a compliance item in this matter, by December 31, 2008.

#### **ACC Compliance**

According to the Utilities Division Compliance Section, the Company has no outstanding Commission compliance issues.

### **Proposed Rates**

The Links is proposing to provide utility services to the extension area at its tariffed rates and charges.

### **Franchise**

Every applicant for a CC&N and/or CC&N extension is required to submit to the Commission evidence showing that the applicant has received the required consent, franchise or permit from the proper authority. If the applicant operates in an unincorporated area, the company has to obtain the franchise from the County. If the applicant operates in an incorporated area of the County, the applicant has to obtain the franchise from the City/Town.

The Links submitted a June 3, 2004 letter from the Town of Wellton's attorney permitting the Company to "use the Town's right-of-ways for its collection system."

### **Recommendations**

Staff recommends the Commission approve The Links' application for extension of its existing CC&N to provide wastewater service in Yuma County, as amended, subject to compliance with the following conditions:

1. To require The Links to charge its tariffed rates and charges in the extension area.
2. To require The Links to file with Docket Control, as a compliance item in this docket, within two years of the effective date of an order, copies of the Approval of Construction documentation for the collection line installation needed to serve the extension area.
3. To require The Links to file a copy of its approved 208 Plan Amendment with Docket Control, as a compliance item in this matter, by December 31, 2007.
4. To require The Links to file a copy of ADEQ's APP modification with Docket Control, as a compliance item in this matter, by December 31, 2008.
5. To require that all operators, agents, or employees including employees and agents of contractors and/or subcontractors operating or constructing the Links' facilities must comply with all Arizona Division of Occupational Safety and Health ("ADOSH") requirements including any and all training required by ADOSH to operate wastewater facilities.
6. To require that on an annual basis, on the anniversary date of the Decision in this matter, for three years, The Links should file in Docket Control, as a compliance item in this matter, certification from ADOSH that it has availed itself of ADOSH consultation services and its operators, agents, employees and agents of contractors/and or

subcontractors operating or constructing the Links' facilities have taken appropriate training.

Staff further recommends that the Commission's Decision granting the requested CC&N extension be considered null and void, after due process, should the Company fail to meet the Condition No. 2, 3, and 4 listed above within the time specified.

## MEMORANDUM

**DATE** September 27, 2006

**TO:** Blessing Chukwu  
Executive Consultant III

**FROM:** Dorothy Hains, P.E. DH  
Utilities Engineer

**RE:** Wastewater CC&N Extension for the Links at Coyote Wash Utilities, LLC  
Docket No. SW-04210A-06-0220

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### Introduction

The Links at Coyote Wash Utilities, LLC ("Links at Coyote Wash" or "Company") has submitted an application to extend its Certificate of Convenience and Necessity ("CC&N") to include approximately one half square mile of land adjacent to its existing CC&N area. The Company is located near the Town of Welton, east of the City of Yuma in Yuma County, Arizona. The Company currently provides wastewater service to 159 customers in an area that is approximately one square mile in size. The Company projects 250 additional customers in the requested area will need service within the next five years.

### System

Links at Coyote Wash owns and operates a 0.0693 million gallon per day ("MGD") wastewater treatment plant ("WWTP"). The WWTP is a package treatment plant, manufactured by Santec Co., equipped with equalization chamber, aeration/anoxic basins, secondary clarifier, and chlorination/dechlorination devices. The treated effluent is used for golf course irrigation. Wastewater flow was 0.014 MGD during the peak day in 2005. The daily average flow in the peak day is 88 gallons per day per connection ("GPD/connection"). Based on the Company's annual reports, Staff estimates that the growth rate in the Company's CC&N area is 59 additional customers per year; plant expansion will be needed in few years. The Company plans to expand the plant to 0.235 MGD within the next five years.

Arizona Department of Environmental Quality ("ADEQ") issued an Aquifer Protection Permit ("APP") for the Company in 2004. In the APP, ADEQ approved a 0.126 MGD plant. However, this expansion will require the Company to file an APP modification and a Section 208 plan amendment. Staff recommends the Company file a copy of its approved 208 Plan Amendment with Docket Control, as a compliance item in this matter, by December 31, 2007. Staff

further recommends that the Company file a copy of ADEQ's APP modification with Docket Control, as a compliance item in this matter, by December 31, 2008.

### **ADEQ Compliance**

Staff received a compliance status report from ADEQ dated May 2, 2006 in which ADEQ stated that the Company is in compliance with its APP permit conditions (APP Number P-105311).

### **Arizona Corporation Commission ("ACC") Compliance**

According to the Utilities Division Compliance Section, The Links at Coyote Wash Utilities has no delinquent ACC compliance issues.

### **Construction Costs**

The Company proposes to install 9,420 feet of 8-inch sewer collection line, 32 manholes and expand its existing treatment plant capacity to 0.235 MGD in conjunction with this CC&N extension request.

The Company estimates that construction costs for serving the requested extension area are approximately \$211,950 for the collection line (approximately \$22.5/ft), \$112,000 for manholes (approximately \$3,500/manhole), and \$804,480 for the treatment plant expansion (approximately \$4.86/GPD). Staff concludes that the estimated costs are reasonable and appropriate for this project. The approval of this CC&N application does not imply any particular future treatment for rate base. No "used and useful" determination of the proposed plant in service was made, and no conclusions should be inferred for rate making or rate base purposes.

Staff recommends that within two years of the effective date of the decision in this matter, the Company file with Docket Control, as a compliance item in this matter, Approval of Construction documentation from ADEQ for the collection line installation.

### **Summary**

#### **I. Conclusions**


1. The Links at Coyote Wash has no outstanding ACC compliance issues.
2. The Links at Coyote Wash wastewater system is currently in compliance with ADEQ requirements.


## **II. Recommendations**

1. Staff recommends the Company file a copy of its approved 208 Plan Amendment with Docket Control, as a compliance item in this matter, by December 31, 2007.
2. Staff further recommends that the Company file a copy of ADEQ's APP modification with Docket Control as a compliance item in this matter by December 31, 2008.
3. Staff further recommends that within two years of the effective date of the decision in this matter, the Company file with Docket Control as a compliance item in this matter Approval of Construction documentation from ADEQ for the collection line installation.

**MEMORANDUM**

TO: Blessing Chukwu  
Executive Consultant III  
Utilities Division

FROM: Barb Wells   
Information Technology Specialist  
Utilities Division

THRU: Del Smith   
Engineering Supervisor  
Utilities Division

DATE: July 10, 2006

RE: **THE LINKS AT COYOTE WASH UTILITIES, LLC (DOCKET NO. W-04210A-06-0220)**  
**AMENDED LEGAL DESCRIPTION**

The area requested by The Links at Coyote Wash for an extension has been plotted using an amended legal description, which has been docketed. This legal description is attached and should be used in place of the original description submitted with the application

Also attached is a copy of the map for your files.

:bsw

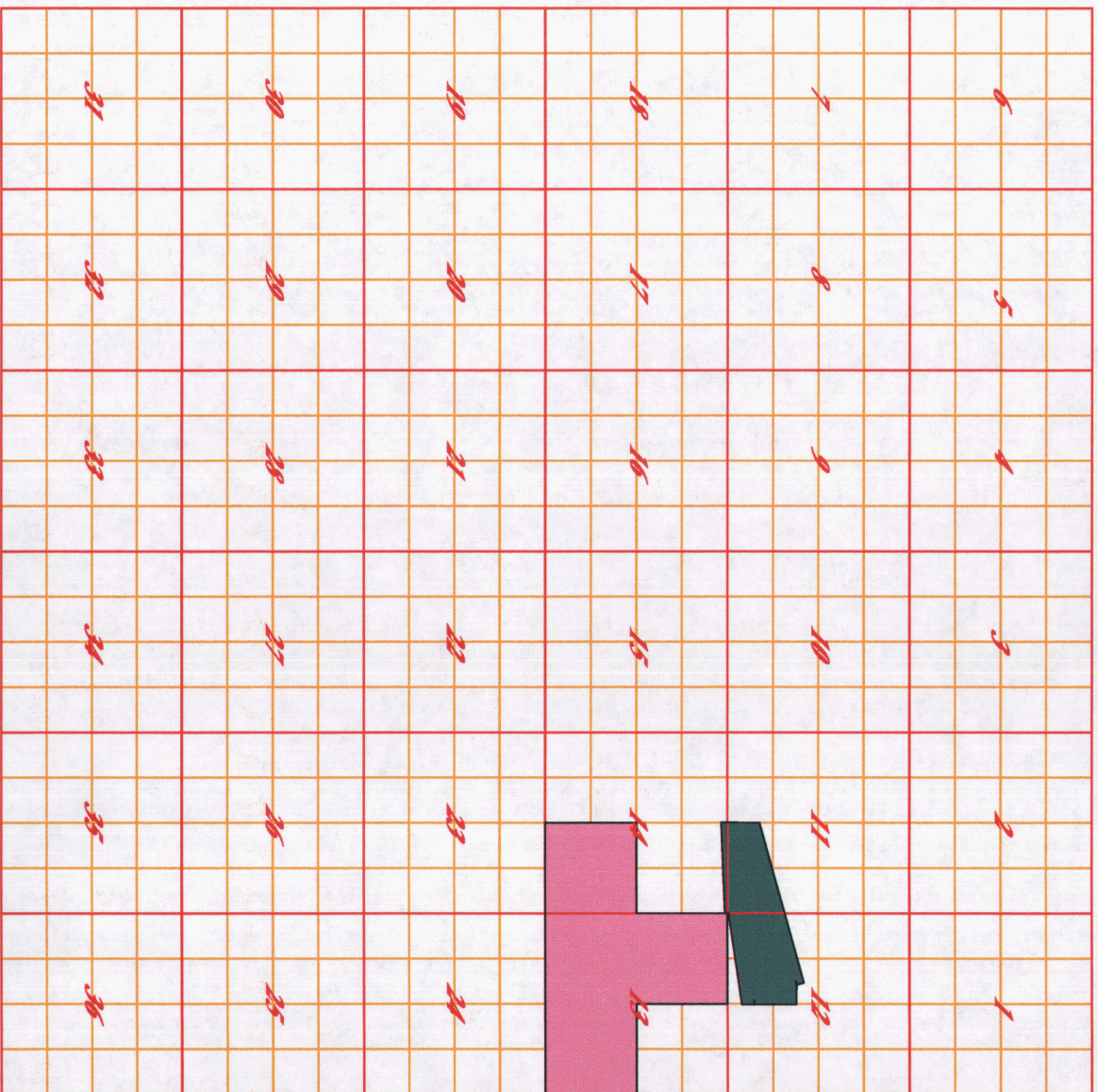
Attachments

cc: Mr. Jay Shapiro  
Ms. Deb Person (Hand Carried)  
File



# COUNTY: Yuma

## RANGE 19 West



## TOWNSHIP 9 South

Sewer

SW-4210 (2)

The Links at Coyote Wash Utilities, LLC

The Links at Coyote Wash Utilities, LLC  
Docket No. SW-04210A-06-0220  
Application for Extension



**LEGAL DESCRIPTION**  
**THE LINKS AT COYOTE WASH SUBDIVISIONS - UNITS 3 & 4**

THOSE PORTIONS OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ ) SECTION 11, THE SOUTHWEST QUARTER (SW $\frac{1}{4}$ ) SECTION 12 AND THE NORTHEAST QUARTER (NE $\frac{1}{4}$ ) SECTION 14, ALL IN TOWNSHIP 9 SOUTH, RANGE 19 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, YUMA COUNTY, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 14;

THENCE S00°22'36"W ALONG THE EAST LINE OF SAID NE $\frac{1}{4}$  OF SECTION 14 A DISTANCE OF 65.03 FEET TO A POINT ON THE CURVE OF THE NORTH RIGHT-OF-WAY LINE OF THE WELLTON CANAL, SAID POINT HAS A LOCAL TANGENT BEARING OF S84°19'09"W;

THENCE WESTERLY ALONG SAID CURVE TO THE RIGHT OF RADIUS 1,900.00 FEET AN ARC DISTANCE OF 108.80 FEET WITH A CENTRAL ANGLE OF 03°16'51" TO A POINT;

THENCE S87°36'00"W ALONG SAID NORTH RIGHT-OF-WAY LINE OF THE WELLTON CANAL A DISTANCE OF 2,544.65 FEET TO A POINT ON THE WEST LINE OF SAID NE $\frac{1}{4}$  SECTION 14;

THENCE N00°21'39"E ALONG SAID WEST LINE OF THE NE $\frac{1}{4}$  SECTION 14 A DISTANCE OF 194.50 FEET TO THE NORTHWEST CORNER OF SAID NE $\frac{1}{4}$  SECTION 14, SAID CORNER IS ALSO SOUTHWEST CORNER OF SAID SE $\frac{1}{4}$  SECTION 11.

THENCE N00°30'57"E ALONG THE WEST LINE OF SAID SE $\frac{1}{4}$  SECTION 11 A DISTANCE OF 915.16 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF INTERSTATE 8;

THENCE N74°35'50"E ALONG SAID SOUTH RIGHT-OF-WAY LINE OF INTERSTATE 8 A DISTANCE OF 2,753.88 FEET TO A POINT ON THE EAST LINE OF SAID SE $\frac{1}{4}$  SECTION 11, SAID POINT IS ALSO ON THE WEST LINE OF SAID SW $\frac{1}{4}$  SECTION 12;

THENCE N74°36'14"E CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE OF INTERSTATE 8 A DISTANCE OF 2,090.30 FEET TO A NORTHEAST CORNER OF THE LINKS AT COYOTE WASH SUBDIVISION - UNIT NO. 3 AS RECORDED IN BOOK 22 OF PLATS PAGES 3-6, YUMA COUNTY RECORDS;

THENCE S15°23'46"E A DISTANCE OF 196.79 FEET;

THENCE S74°56'54"W A DISTANCE OF 100.00 FEET;

THENCE S15°23'46"E A DISTANCE OF 15.04 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE SOUTHERLY ALONG SAID CURVE OF RADIUS 825.00 FEET AN ARC DISTANCE OF 4.96 FEET WITH A CENTRAL ANGLE OF 00°20'40" TO A POINT;

THENCE N74°56'54"E A DISTANCE OF 83.60 FEET;

THENCE S89°31'03"E A DISTANCE OF 592.89 FEET TO A POINT ON THE EAST LINE OF SAID SW1/4 SECTION 12;

THENCE S00°28'57"W ALONG SAID EAST LINE OF THE SW1/4 SECTION 12 A DISTANCE OF 1205.00 FEET TO A POINT;

THENCE N89°31'03"W A DISTANCE OF 100.00 FEET;

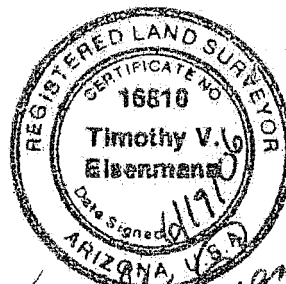
THENCE S00°28'57"W A DISTANCE OF 20.00 FEET;

THENCE S89°31'03"E A DISTANCE OF 100.00 FEET TO A POINT ON SAID EAST LINE OF THE SW1/4 SECTION 12;

THENCE S00°28'57"W ALONG SAID EAST LINE OF THE SW1/4 SECTION 12 A DISTANCE OF 350.95 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF THE WELLTON CANAL;

THENCE CONTINUING S81°39'24"W ALONG SAID NORTH RIGHT-OF-WAY LINE OF THE WELLTON CANAL A DISTANCE OF 2,677.74 FEET TO A POINT ON THE WEST LINE OF SAID SW1/4 SECTION 12;

THENCE S00°27'03"W ALONG SAID WEST LINE OF THE SE1/4 SECTION 12 A DISTANCE OF 34.07 FEET TO THE POINT OF BEGINNING.



*Timothy V. Elsenmann*

## IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

## IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,

Plaintiff,

vs.

FAR WEST WATER & SEWER (001),  
 CONNIE CHARLES (002),  
 BRENT HENRY WEIDMAN (003),  
 SANTEC CORPORATION (004),

Defendants.

No. S1400CR200201238

Div. IV

**PLEA AGREEMENT**

(Assigned to the Honorable Andrew W. Gould)

G 1. The State of Arizona and the Defendant SanteC Corporation (OO4) hereby agree to the following disposition of this case:

**Plea:** The Defendant agrees to plead guilty to Count XII, Violating Safety Standard and Causing Death of an Employee, a Class 6 felony in violation of A.R.S. 23-418(e), 13-303, 13-305, 13-701, 13-702, 13-707, 13-801, 13-802, 13-803, and 13-901, committed on or about October 24, 2001.

This is a non-dangerous, non-repetitive offense under the criminal code.

**Terms:** On the following understandings, terms and conditions:

A Class 6 felony carries a presumptive sentence of 1.0 years, a minimum sentence of .5 years (.33 years if the court finds exceptionally mitigated circumstances), and a maximum sentence of 1.50 years (2.0 years if the court finds exceptionally aggravated circumstances). Probation IS available. Restitution of economic loss to the victim and waiver of extradition for probation revocation procedures are required. The maximum fine that can be imposed for each count is \$1,000,000 plus a 77% surcharge. Special conditions regarding sentence imposed by statute (if any) are: None.

G 2. The parties stipulate to the following additional terms: (These stipulations are subject to court approval at the time of sentencing as set forth in paragraph 7.)

A. Defendant is a corporation and not subject to a jail term or imprisonment. Defendant will pay \$30,000, which shall be applied to restitution owed to the victim Maxine Lanser, with any balance paid to the State as a fine. Restitution may include payment for expenses for Mrs. Lanser to attend the trial of the other defendants in the case. Restitution for any other victims will be as ordered by the Court. In all other respects, the sentence is left to the discretion of the Court.

B. Defendant will adopt a corporate resolution affirming its plea to the offense and enter its plea through an authorized designee in the Court in Yuma, Arizona.

C. The State understands that Defendant's position is that the offense of Violating Safety Standards and Causing the Death of an Employee is eligible for treatment as a Class 6 undesignated offense under A.R.S. 13-702(G) and that designation of the offense as a misdemeanor is appropriate. The State contends that A.R.S. 13-702(G) does not permit the designation of the offense as a misdemeanor and that, even if it did, such treatment is not appropriate. The parties have agreed to leave this issue to be decided by the trial judge.

D. The Defendant has made its principals, John Clingman and Dwight Zemp, available for interviews with the State, and will make them available for interviews by counsel for other defendants, and for trial of co-defendants. The State will provide immunity from criminal prosecution for Mr. Clingman and Mr. Zemp arising from the events of October 24, 2001, or facts associated with this case. Defendant understands that a grant of immunity does not apply to witnesses' obligation to testify truthfully in further proceedings.

E. Defendant will waive Ethical Rule 4.2 to allow counsel for the State to interview Shawn Hackbarth, will arrange for interviews of Mr. Hackbarth by counsel for other defendants, and will make Mr. Hackbarth available for trial of co-defendants.

G 3. The following charges are dismissed, or if not yet filed, shall not be brought against the Defendant: Counts 8, 9, and 10.

G 4. This agreement serves to amend the complaint or information, to charge the offense to which the Defendant pleads, without the filing of any additional pleading. However, if the plea is rejected by the court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea agreement are automatically reinstated.

G 5. The Defendant hereby waives and gives up its rights to a preliminary hearing or other probable cause determination on the charges to which it pleads. The Defendant agrees that this agreement shall not be binding on the State should the Defendant be charged with or commit a crime between the time of this agreement and the time for sentencing in this cause; nor shall this agreement be binding on the State until the State confirms all representations made by the Defendant and its attorney, to-wit: Defendant has no prior felony convictions in any jurisdiction and was not on probation or parole at the time of the offense.

If the Defendant fails to appear for sentencing, the Court may disregard the stipulated sentence and impose any lawful sentence that is the same as or exceeds the stipulated sentence in the plea agreement. In the event the Court rejects the plea, or either the State or the Defendant withdraws the plea, the Defendant hereby waives and gives up its right to a preliminary hearing or other probable cause determination on the original charges.

G 6. Unless this plea is rejected by the court or withdrawn by either party, the Defendant hereby waives and gives up any and all motions, defenses, objections, or requests which it has made or raised, or could assert hereafter, to the Court's entry of judgment against it and imposition of a sentence upon it consistent with this agreement. By entering this agreement, the Defendant further waives and gives up the right to appeal.

G 7. The parties hereto fully and completely understand and agree that it is the Court's duty to impose sentence upon the Defendant, and that any sentence either stipulated to or recommended herein in paragraph two is not binding on the Court. If after accepting this plea the Court concludes that any of the plea agreement's provisions regarding the sentence or the term and conditions of probation are inappropriate, it can reject the plea. If the Court decides to reject the plea agreement provisions regarding sentencing, it must give both the State and the Defendant an opportunity to withdraw from the plea agreement. In case this plea agreement is withdrawn, all original charges will automatically be reinstated. The Defendant in such case waives and gives up its right to a probable cause

determination on the original charges.

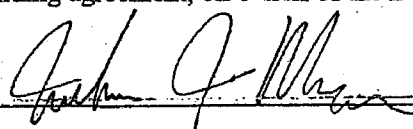
G 8. If the Court decides to reject the plea agreement provisions regarding sentencing and neither the state nor the Defendant elects to withdraw the plea agreement, then any sentence either stipulated to or recommended herein in paragraph 2 is not binding upon the Court, and the Court is bound only by the sentencing limits set forth in paragraph 1 and the applicable statutes.

G 9. This plea agreement in no way affects any forfeiture proceedings pursuant to A.R.S. ' 13-4301 et seq., ' 13-2314, or ' 32-1993, if applicable, nor does the plea agreement in any way compromise or abrogate any civil actions, including actions pursuant to A.R.S. ' 13-2301 et seq. or ' 13-4301 et seq., or the provisions of A.R.S. ' 13-2314(H) or A.R.S. ' 13-4310(C).

G I have read and understand the provisions of pages one, two and three of this agreement; I have discussed the case and constitutional rights with the lawyer representing Santec Corporation in this matter. I understand that by pleading guilty Santec Corporation will be waiving and giving up its right to a determination of probable cause, to a trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present evidence in its behalf, its right to remain silent, its privilege against self-incrimination, presumption of innocence and right to appeal. I agree to enter a plea on behalf of the Defendant as indicated above on the terms and conditions set forth herein. I fully understand that if, as part of this plea agreement, the Defendant is granted probation by the Court, the terms and conditions thereof are subject to modification at any time during the period of probation. I understand that if the Defendant violates any of the written conditions of its probation, its probation may be terminated and it can be sentenced to any term or terms consistent with the paragraphs above, without limitation.

I have personally and voluntarily placed my initials in each of the above boxes and signed the signature line below to indicate I read and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement, on behalf of the Defendant.

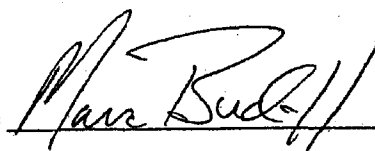
Date



On Behalf of the Defendant

I have discussed this case with my client in detail and advised it of its constitutional rights and all possible defenses. I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

Date

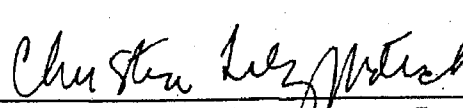


#003767

Defense Counsel

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date



Prosecutor

Mark Horlings, Assistant Attorney General

